

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LEROY A. BARNETT,

Plaintiff,

vs.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No.: 2:14-cv-01819-GMN-VCF

ORDER

Pending before the Court for consideration is a Motion to Remand, (ECF No. 11), filed by Plaintiff Leroy A. Barnett (“Plaintiff”). Defendant Nancy A. Berryhill¹ (“Defendant” or “the Commissioner”) filed a Response, (ECF No. 13), and Plaintiff filed a Reply, (ECF No. 14). These motions were referred to the Honorable Cam Ferenbach, United States Magistrate Judge, for a report of findings and recommendations pursuant to 28 U.S.C. §§ 636(b)(1)(B) and (C).

On July 10, 2015, Judge Ferenbach entered the Report and Recommendation (“R. & R.”), (ECF No. 15), recommending Plaintiff’s Motion to Remand be denied. Plaintiff filed an Objection, (ECF No. 17), to the Report and Recommendation on July 21, 2015, and the Commissioner filed a Reply to the Objection, (ECF No. 18), on July 31, 2015.

I. BACKGROUND

Plaintiff brings this action against Defendant in her capacity as the Commissioner of the Social Security Administration, pursuant the Social Security Act, 42 U.S.C. § 405(g). (Compl.,

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit.

1 ECF No. 1). Plaintiff seeks judicial review of a final decision of the Commissioner of the
2 Social Security Administration denying her claims for social security disability benefits under
3 Title II of the Social Security Act, 42 U.S.C. §§ 401–403. (*Id.* ¶ 9).

4 Plaintiff applied for disability insurance benefits on January 22, 2013, which were
5 denied initially, upon reconsideration, and after a hearing before an Administrative Law Judge
6 (“ALJ”) on July 1, 2014. (Mot. for Remand 3:7–12, ECF No. 11). Plaintiff timely requested
7 Appeals Council review of the ALJ’s decision, which was denied on September 10, 2014. (*Id.*
8 3:13–15). Plaintiff then filed his Complaint and the instant Motion in this Court.

9 **II. LEGAL STANDARD**

10 A party may file specific written objections to the findings and recommendations of a
11 United States Magistrate Judge made pursuant to Local Rule IB 1–4. 28 U.S.C. § 636(b)(1)(B);
12 D. Nev. Local R. IB 3-2. Upon the filing of such objections, the Court must make a *de novo*
13 determination of those portions of the Report to which objections are made. *Id.* The Court may
14 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
15 Magistrate Judge. 28 U.S.C. § 636(b)(1); D. Nev. Local R. IB 3-2(b).

16 **III. DISCUSSION**

17 Plaintiff challenges Judge Ferenbach’s findings that the ALJ properly evaluated the
18 medical evidence and that the ALJ properly considered the Veterans Administration’s (“VA’s”)
19 finding of disability. Upon review, the Court determines whether the Commissioner’s decision
20 is supported by enough “evidence as a reasonable mind might accept as adequate to support a
21 conclusion.” *Consolidated Edison Co. v. NLRB*, 305 U.S. 197 (1938); *see Burch v. Barnhart*,
22 400 F.3d 676, 679 (9th Cir. 2005) (stating that if the evidence supports more than one
23 interpretation, the court must defer to the Commissioner’s interpretation). Additionally,
24 Plaintiff admits in his Motion that the “ALJ is correct that he is not bound by the VA decision.”
25 (Mot. to Remand 7:6).

1 Here, the ALJ satisfied its standard. As Judge Ferenbach points out, “[b]ased on
2 [Plaintiff’s] medical records, physician and nurse notes, testimony, and wife’s report, the ALJ
3 found that [Plaintiff’s] ability to engage in a variety of daily activities . . . suggests that his
4 capacity was not as limited,” and that the “ALJ’s conclusions are supported by substantial
5 evidence.” (R. & R. 7:17–20). Moreover, the ALJ not only considered the substantial medical
6 evidence, testimony, and reports in coming to its decision, but also took into consideration the
7 VA’s determination. The Court therefore agrees with Judge Ferenbach’s conclusion that the
8 ALJ’s determination is supported by substantial medical evidence and that the ALJ adequately
9 considered the VA’s finding.

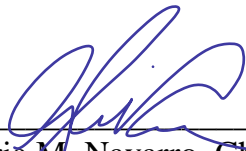
10 Having reviewed the Commissioner’s objections *de novo*, the Court finds no basis on
11 which to reject Judge Ferenbach’s findings and recommendations. The Court therefore denies
12 Plaintiff’s Motion.

13 **IV. CONCLUSION**

14 **IT IS HEREBY ORDERED** that the Report and Recommendation, (ECF No. 15), be
15 **ACCEPTED** and **ADOPTED** in full, to the extent that it is not inconsistent with this Order.

16 **IS FURTHER ORDERED** that Plaintiff’s Motion to Remand, (ECF No. 11), is
17 **DENIED**. The Clerk of Court is instructed to enter judgment accordingly and close the case.

18 **DATED** this 14 day of April, 2017.

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21 _____
22 Gloria M. Navarro, Chief Judge
23 United States District Judge
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